

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

AN&T REAL ESTATE INV.
Respondent

Case No.: I-00-20300

FINAL ORDER

I. Introduction

On March 19, 2002, the Government served a Notice of Infraction upon Respondent AN&T Real Estate Inv., alleging that it violated 21 DCMR 700.3 by failing to properly containerize solid wastes. The Notice of Infraction alleged that the violation occurred on March 12, 2002 at 2002 Rosedale Street, N.E., and sought a fine of \$1,000. Respondent has filed a timely plea of Admit with Explanation, together with a request for suspension or reduction of the fine, and the Government has replied to that request.

II. Summary of the Evidence

Respondent admits that it owns an apartment building at 2002 Rosedale Street, N.E. It asserts that one of the tenants was responsible for maintenance of the property, including trash removal. Respondent asserts that the tenant moved out, but that it was not aware until March 20 that he had left. Respondent notes, however, that on March 1, a representative of PEPCO

contacted it to obtain a key to the apartment to turn off the electricity due to the tenant's failure to pay his bill.

Respondent asserts that the trash at issue was the tenant's unwanted property, which he simply threw into the yard instead of placing in the building's trash cans. Respondent also states that it was unaware of the trash accumulation in the yard and did not receive a warning before issuance of the Notice of Infraction. Respondent asserts that it arranged for removal of the trash from the yard on March 20, one day after it received the Notice of Infraction, and that trash is removed from the property every Friday.¹

The Government states that a "substantial reduction" of the fine is acceptable to it, in light of Respondent's explanation.

III. Findings of Fact

Respondent's plea of Admit with Explanation establishes that trash was improperly stored or containerized at its property on March 12, 2002. The improper storage resulted because a tenant who had been responsible for maintenance of the property moved from the building. Respondent's assertion that it was unaware until March 20 that the tenant had moved is not credible. Respondent knew that the electricity had been turned off since March 1, and it was foreseeable that the tenant would not be remaining in an apartment without electricity.

¹ Respondent's attention is called to 21 DCMR 705.2, which generally requires trash to be collected twice a week.

Respondent, however, took prompt action to remove the offending trash once the violation was called to its attention and there is no evidence in the record that it has a history of prior violations.

IV. Conclusions of Law

The regulation at issue provides:

All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.

21 DCMR 700.3.

Respondent's plea of Admit with Explanation establishes that it violated § 700.3 on March 12, 2002. The Rodent Control Act of 2000 classified a violation of § 700.3 as a Class 1 infraction, which is punishable by a fine of \$1,000 for a first offense.² 16 DCMR 3201. Respondent's argument that its tenant was responsible for the violation does not mitigate the fine. As the owner of the property, Respondent is responsible for compliance with § 700.3. *DOH v. Young*, OAH No. I-00-20332 at 3-4 (Final Order March 14, 2002). Moreover, Respondent acted unreasonably by not checking on the property after receiving information indicating it was likely that the tenant who was in charge of maintenance had moved. *See Ray v. Queen*, 747 A.2d 1137, 1141 (D.C. 2000) (noting that a party is on "inquiry notice" if does not exercise reasonable diligence in acting on available information). Respondent's argument that it

² The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. See 47 D.C. Reg. 8962 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 700.3. 47 D.C. Reg. at 6339 (August 11, 2000).

should have received a warning before issuance of the Notice of Infraction also does not mitigate the fine. No prior warning is necessary before an inspector can cite a property owner for a § 700.3 violation. *Bruno v. District of Columbia Board of Appeals and Review*, 665 A.2d 202 (D.C. 1995).

The record, however, does contain evidence supporting a reduction in the fine. Respondent acted promptly to correct the violation and there is no evidence of a history of prior violations. In addition, the Government has consented to a substantial reduction of the fine. Accordingly, the fine will be reduced to \$500.

V. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2002:

ORDERED, that Respondent shall pay a total of **FIVE HUNDRED DOLLARS (\$500)** in accordance with the attached instructions within twenty (20) calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to D.C. Code Official Code § 2-1802.03 (i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **05/15/02**

John P. Dean
Administrative Judge